IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nishar Ahmed v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.549/2006
under Article 226 of the Constitution of India.

Date of Order :: 23rd October, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.L.Maheshwari, for the petitioner.
Mr. S.N.Tiwari, Deputy Government Advocate.
Mr. R.K.Purohit, Caveator.

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BY THE COURT :

This petition for writ is directed to challenge validity, propriety and correctness of the judgment and order dated 15.12.2005 passed by State Transport Appellate Tribunal, Rajasthan quashing the permit sanctioned by Regional Transport Authority, Chittorgarh (hereinafter referred to as “the RTA”) for Begun-Rawatbhata route in favour of the petitioner by an order dated 19.9.2003.

The facts leading to present controversy and necessary to be noticed for adjudication of instant petition for writ are as follows:-

The Government of Rajasthan and the Government of Madhya Pradesh entered into a reciprocal transport agreement on 18.7.2001 with regard to operations of stage carriage on interstate routes between Rajasthan and Madhya Pradesh. The agreement incorporated non-notified routes in Annexure-A and notified routes in Annexure-B. It was also agreed that the stage carriage permit of both the States countersigned prior to agreement dated 18.7.2001 shall be valid till their validity.

The routes Chambal Dam to Begu via Ratangarh, Bhilwara to Bhainsrodgarh via Dhardi-Singoli, Begun and the route Chotisadri to Neemach via Dhamania were included in Annexure-B at serial Nos.11, 13 and 33 respectively.

By a supplementary reciprocal transport agreement dated 30.6.2003 the State of Madhya Pradesh and the State of Rajasthan agreed to shift three routes referred above to Annexure-A from Annexure-B. By the same agreement a new route Begun-Rawatbhata via Singoli was added in Annexure-A of the agreement dated 18.7.2001. Relevant details of the agreement as set out are quoted below:-

> "Begun-Rawatbhata via Singoli may be added in the Annexure-A of the said agreement. The scope of these interstate stage carriage routes shall be as per Annexure-A.1, which shall become part of the Annexure-A of the existing reciprocal agreement dated the 18th July, 2001."

The supplementary reciprocal agreement was published in Rajasthan Gazette on 17.7.2003 and in Madhya Pradesh State Gazette on 24.12.2003.

The RTA, Chittorgarh under an order dated 19.9.2003 after considering 25 applications for grant of permit to operate stage carriage on Begun-Rawatbhata via Singoli route held 10 permits earlier granted covered under the limit of 15 permits fixed for Begun-Rawatbhata route and against remaining five vacancies granted five permits including one sanctioned in favour of the petitioner. The sanctioned permit was issued by the competent authority and was also countersigned by the competent authorities of Transport Department of the State of Madhya Pradesh.

By way of filing appeals a challenge was given to the order dated 19.9.2003 by unsuccessful applicants before the State Transport Appellate Tribunal, Rajasthan and the Tribunal by its judgment dated 15.12.2005 accepted the appeals and quashed the

order impugned with a direction to consider applications afresh as per conditions referred in reciprocal agreement. While accepting the appeals the Tribunal held that (1)the supplementary reciprocal agreement was published in Rajasthan Gazette on 17.7.2003 and in the Gazette of Madhya Pradesh on 24.12.2003, therefore, as per provisions of sub-section(6) of Section 88 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") the RTA was having no authority or jurisdiction to sanction a permit for newly added route i.e. Begun-Rawatbhata via Singoli; and (2)the route Begun-Rawatbhata via Singoli was a new route added by supplementary reciprocal agreement and that was not existing in any prior reciprocal agreement, thus, for that route the permits sanctioned for other routes such as Bhilwara-Bhainsrodgarh/ Chittorgarh-Bhainsrodgarh could not have been validated.

Feeling aggrieved by the judgment and order dated 15.12.2005 this petition for writ is preferred mainly on following grounds:-

> (1)after participating before the RTA for grant of permit and on being unsuccessful in getting permit to operate stage carriage on Begun-Rawatbhata via Singoli the appellant respondents No.4 to 7 were barred to challenge the order dated 19.9.2003 as per the doctrine of estoppel by acquiescence and by deeds;

(2)the supplementary reciprocal agreement dated 30.6.2003 was nothing but a corrigendum to the reciprocal agreement dated 18.7.2001, thus, the date of its coming into force is to relate back with the date on which original reciprocal transport agreement came into force; and

(3)the Begun-Rawatbhata via Singoli route was not a new route but was only a curtailment of Bhilwara-Bhainsrodgarh route referred in earlier reciprocal agreement, thus, the Tribunal by order impugned erred while treating it as a new route.

To support first contention, reliance is placed by counsel for the petitioner on several judgments, however, none of these actually substantiate the contention advanced.

In the case of Rukmini Amma Saradamma v. Kallyani Sulochana and others (AIR 1993 SC 1616), on confirmation by the appellate court an order of eviction from the rented premises a revision petition was preferred before the District Court and that was dismissed. A second revision petition thereafter was preferred before the High Court under Section 115 CPC and that was accepted by remitting the matter to the trial court. On remit, the trial court dismissed the application for eviction but the appellate court accepted the same and directed eviction of the tenant from rented premises. The Division Bench of the High

accepted the revision petition by holding that bonafide need was not proved warranting eviction of the tenant. In an appeal by special leave it was urged that the order passed by the High Court at first instance remitting the matter to the trial court was void as no second revision was permissible. While dealing with the argument Hon'ble Apex Court held that in pursuant to the order of remit party took a chance by participation in the proceedings before the trial court, taking up matter to the appeal, thus, having acquiesced in these proceedings no question could have been raised to challenge the first remit order.

In the case of Prasun Roy v. The Calcutta Metropolitan Development Authority and another (AIR 1988 SC 205), it was held that long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction.

In the case of Ferro Alloys Corporation Ltd. and another v. Union of India and others (AIR 1999 SC 1236), Hon'ble Supreme Court restrained a party from re-agitating a grievance that was consciously waived by the party concerned at a earlier stage.

In the case of Suneeta Aggarwal v. State of Haryana and others (AIR 2000 SC 1058), a candidate (appellant herself) did not choose to assail validity

of an order declining her appointment and decided to participate in fresh selection proceedings was estopped to challenge the earlier order declining appointment on being unsuccessful in subsequent selection proceedings.

In the case of G.Ramanna Chowdary v. The Government of Andhra Pradesh Home (Transport III) Department and others (AIR 1972 Andhra Pradesh 195), Division Bench of Hon'ble Andhra Pradesh High Court held that “having submitted to its jurisdiction and taken a chance of a favourable order, the petitioners cannot turn round and object to the jurisdiction of the Regional Transport Authority before the Appellate Authority, when the order of the Regional Transport Authority was against them. Such an objection having not been raised before the Regional Transport Authority or the Appellate Authority could not have been taken before the Government.

In all the cases referred above the doctrine of estoppel by acquiescence or deeds was considered and applied, however, in the instant matter such doctrine is having no application. In the present case the RTA was considering applications for sanctioning permit for a route that as a matter of fact was not at all in existence in light of the provisions of sub-section(6) of Section 88 of the Act of 1988. It is not in dispute that the supplementary reciprocal agreement

was published in Madhya Pradesh State Gazette on 24.12.2003 but the RTA decided the applications on 19.9.2003 i.e. quite earlier than to acquisition of finality by reciprocal agreement. In view of the factual position above, in the instant matter on the date the RTA considered and decided the applications for sanctioning permit, no route was available in that regard. In such circumstances, the participation of the appellant respondents in the proceedings before the RTA is of no consequence. It is not a case of acquiescence but exercise of powers by an authority without having to do so. The RTA on 19.9.2003 was not having any authority to issue any permit regarding the route Begun-Rawatbhata via Singoli.

Beside whatever stated above, it is also well settled that the doctrine of estoppel does not operate against a statute and no question of estoppel arise, where both the parties, as in present case, were labouring under the mistake of law. In the instant matter the RTA was operating against a statute, therefore, it is not acquiescence that may estop to challenge unauthorise exercise of powers by the RTA in sanctioning permits for the route Begun-Rawatbhata via Singoli.

I also do not find any substance in the second contention of counsel for the petitioner that the route Begun-Rawatbhata via Singoli was nothing but

a corrigendum to the reciprocal agreement dated 18.7.2001, thus, its date of coming into effect is to relate back with the date on which original reciprocal agreement came into force. From reading of the reciprocal agreement dated 30.6.2003 it is apparent that the route Begun-Rawatbhata via Singoli was for the first time included in the reciprocal agreement and was placed in Annexure-B. A route that was not in existence prior to 24.12.2003 cannot be held to be in existence from the date of coming into force the earlier reciprocal agreement dated 18.7.2001. The reciprocal agreement dated 30.6.2003 also nowhere mentions that it shall be having application with retrospective effect.

Counsel for the petitioner to substantiate the contention that amendment tantamount to planting and drafting in original statute, placed reliance upon several judgments including AIR 1973 Kerala 136 (Raman Sahadevan v. R.Kesavan Nair), AIR 1960 SC 1073 (H.C.Narayanappa and others v. State of Mysore and others), AIR 1954 Calcutta 484 (Khuda Bux v. Manager, Caledonian Press), AIR 2001 SC 2896 (Siddalingamma and another v. Mamtha Shenoy), and AIR 2002 Rajasthan 395 (Vishnudutt v. Manoj Kumar and others), however, present one is not a case of planting or modification but is of introduction of absolutely a new route by a supplementary reciprocal agreement. The supplementary reciprocal agreement dated 30.6.2003 to the extent it

relates to adding of Begun-Rawatbhata via Singoli route is not modification or amendment to the earlier reciprocal agreement dated 18.7.2001 but is an extension to that. In view of it none of the cases, reliance on which is placed, is having application in present controversy.

I also do not find any force in the third contention of counsel for the petitioner that Begun-Rawatbhata via Singoli route was not a new route but was only a curtailment of Bhilwara-Bhainsrodgarh route referred in earlier reciprocal agreement. The simple reading of reciprocal agreement dated 30.6.2003 makes it abundantly clear that a new route was added by the agreement aforesaid. No route in the name of Begun-Rawatbhata via Singoli was ever existing in earlier reciprocal agreement.

For the reasons given above, I do not find any error in the judgment dated 15.12.2005 passed by learned State Transport Appellate Tribunal, Rajasthan that may warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed with no order as to costs.

(GOVIND MATHUR),J.

Kkm/ps.